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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,880	11/03/2003	Daniel W. Jones	33244	2879

23589 7590 11/03/2005

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EXAMINER

HURLEY, KEVIN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/605,880	Applicant(s) JONES ET AL.	
	Examiner Kevin Hurley	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,27-39 and 60-85 is/are pending in the application.
- 4a) Of the above claim(s) 6,18 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5,7-9,27-39 and 60-83 is/are allowed.
- 6) ☒ Claim(s) 10-20,84 and 85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-20, 84 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In independent claims 10, 16, 84 the language “mimics the corresponding rider’s leg” is indefinite since the leg receiving is being defined relative to a human leg. Since human legs are inherently of different sizes, the area itself is indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim(s) 84 and 85 are product by process claims. Product-by Process claims are not limited to the manipulations of the recited steps, only the structure implied. See MPEP 2113. “[E]ven though product-by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ

964, 966 (Fed. Cir. 1985).

Specifically, claims 84 and 85 use the terms “original”, “retrofit”, “defined by the chassis and engine prior to the motorcycle being retrofit” which are not structural limitations, but limitations on the process of assembling the motorcycle.

5. Claims 84 and 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry 5,263,463.

Perry teaches a motorcycle having the structure as claimed. The device includes a supercharger 15 spaced forward of the crankshaft (fig. 21). The device further includes various endless elements (i.e. element 20, and the drive element under cover 6). The endless elements may be cogged as shown in fig. 19a. As shown in fig. 27, the device may include an indirect power take off component 18. As shown in fig. 7, the air induction system is outside of the leg-receiving areas 53. The device further includes a support bracket 23. It is considered to be inherent that the device includes foot supports.

Allowable Subject Matter

6. Claims 1-5, 7-9, 27-39 and 60-83 are allowed.

7. Claims 10-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

Response to Arguments

8. Applicant's arguments regarding claims 84-85 have been fully considered but they are not persuasive. Regarding claim 84, applicant has argued that the schematic depiction of the rider leg 53 relative to the blower 15 in Fig. 7 does not show or suggest that an original leg receiving area has been preserved in the vicinity of the blower 15 and the associated drive equipment. As noted above, only the structure of the invention, not the manner in which it was assembled is considered in an apparatus claim. There are no structural limitations in claim 84-85 which are not met by the Perry reference.


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Hurley whose telephone number is 571-272-6646. The examiner can normally be reached on Monday-Friday 9:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin Hurley
Primary Examiner
Art Unit 3611

October 19, 2005